


School Law Update

2004 Annual Conference



Sunshine Law

Basic Concepts
2004 Amendments



SAO Audit

- ❑ Issued in November, 1999
 - ❑ Sample of 204 political subdivisions
 - ❑ Requested minutes to the last board meeting in 1998
 - ❑ Offered reimbursement of costs up to \$10
 - ❑ Submitted on plain stationary
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Audit Results

Sample of 204

Not responding:

32.2%

Not responding properly:

47.6%

Not responding in 3 days:

89.3%



School District Response

Number of School Districts Contacted

35

Number of School Districts Not Responding

5

Number of School Districts Refusing Request

1



Most Quotable Response

“First, we don’t know who you are, or anything about why you should want these minutes.”

“We can’t just send this information to anyone without knowing what they want with them.”



Scope of the Law

- Applies to meetings, records, votes, actions.
 - Liberally construed toward access, exceptions strictly construed.
 - Meetings at convenient times and accessible sites.
 - Applies to governmental bodies, quasi-governmental bodies and certain advisory committees.
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Key Policy Issues

- ❑ Each school district must have a written Sunshine Law policy.
 - ❑ The policy must name a custodian of records.
 - ❑ Applies to all meetings, regardless of the manner in which they are held.
 - ❑ Access is to records already in existence.
 - ❑ No requirement to create new records.
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Closed Records

- ❑ Legal actions, causes of action or litigation
- ❑ Leasing, purchase or sale of real restate
- ❑ Hiring, firing, disciplining or promoting personnel
- ❑ Individual welfare cases
- ❑ Software codes
- ❑ Individual personnel records
- ❑ Records on security systems
- ❑ Otherwise protected by law



Sunshine Law

Senate Bills 1020, 889 & 869



Public Records

- Documents prepared by a consultant are considered a public record and retained.
 - Definition of public record includes documents created by private entity under contract with a governmental body.
 - Records must be supplied in the format requested, if available.
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Public Votes

- ❑ Public votes include votes cast in person, by telephone or other electronic means.
- ❑ Roll call votes taken in public meetings shall consist only of members who are physically present and in attendance at the meeting.
- ❑ Exceptions: General Assembly, committees established by a public body and emergency meetings.



Meeting Notices

- Meetings conducted by telephone or other electronic means must include notice of the mode by which the meeting will be conducted and where the public may attend the meeting.
 - Notice for such meetings must be posted on the website of the public body, as well as, at the principal office of the body.
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Public Access

- ❑ Meetings held by telephone, video link or internet considered public meetings.
- ❑ Recording by audiotape or videotape allowed.
- ❑ May establish guidelines to minimize disruption to the meeting.
- ❑ Audio recording of a closed meeting without the permission of the public body - Class C misdemeanor.
- ❑ The custodian of records cannot alter or dispose of the records at issue after an enforcement action is filed.



Closed Meetings and Records

- ❑ Public bodies are required to maintain minutes of closed meetings.
 - ❑ Records concerning a transaction involving real estate must be made public upon execution of the transaction, rather than within 72 hours of execution.
 - ❑ Donations or contributions from private sources cannot be closed.
 - ❑ Final audit reports issued by auditors of a public body must be open.
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Member Objections

- ❑ Any board member may object to closing a meeting, record or vote if the member believes the motion violates the Sunshine Law.
 - ❑ Members must object at or before the motion to close is voted upon.
 - ❑ Members are allowed to fully participate in any subsequent meeting or vote.
 - ❑ If the objecting member also votes in opposition to the motion to close, the member shall be immune from any liability for improper closure of a meeting.
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Electronic Communication

- Any member of public body who transmits a message relating to public business by electronic means must concurrently transmit the message to the person's office computer or to the custodian of records.
 - Applies to messages sent to two or more members of the board so that, when counting the sender, a majority of the members are copied.
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Copy and Search Fees

- ❑ Cannot exceed 10 cents per page for paper no larger than 9 by 14 inches. Exception: motor vehicles records.
 - ❑ Search costs cannot exceed the average hourly rate of pay for the clerical staff of the public body.
 - ❑ Research time for may be charged at the actual cost of research time
 - ❑ Must use employees that result in the least amount of charges for search and duplication.
 - ❑ Must provide, if requested, an estimate of the costs prior to the production of the records.
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Copy and Search Fees

- Computer documents, maps, and copies larger than 9 by 14 inches, changes include:
 - cost of copies
 - staff time, not exceeding the hourly pay rate
 - cost of the disk used for duplication
 - If specialized personnel are needed to copy documents, a different fee may be charged for staff time.
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Penalties

- ❑ Civil penalty of up to \$1000 for knowingly violating the law.
 - ❑ Civil penalty of up to \$5000 for purposefully violating the law.
 - ❑ Costs and attorney fees may be awarded.
 - ❑ Courts have the discretion in setting the amount of the fine based upon the size of the entity, the seriousness of the offense, and whether there has been a previous violation of the Sunshine Law.
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Databases

- ❑ Contracts to create a public records database must not impair the ability to inspect or copy public records.
- ❑ A useable electronic format shall allow viewing and printing of records.
- ❑ If records are kept on a system capable of being copied, then the body shall provide data to the public in such electronic format, if requested.



Notice by Publication

- Currently, a newspaper must be published regularly and consecutively for three years to be qualified to publish advertisements and orders of publication required by law.
 - Waives the three year requirement if the newspaper is the sole paper operating in the county and it has been published regularly and consecutively for two years.
 - Emergency clause.
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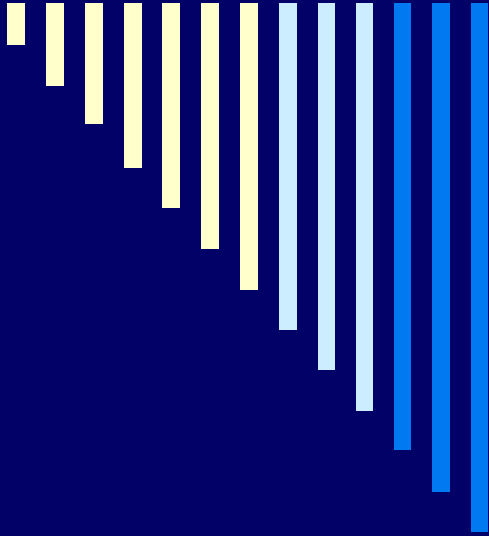
Frequently Asked Questions

- ❑ The Sunshine Law allows you to close meetings and records, but it does not require that you do so.
 - ❑ You must give at least 24 hours' public notice before holding a meeting.
 - ❑ If the meeting is closed, the notice must state the justification for it being closed.
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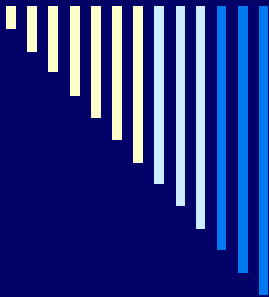


Frequently Asked Questions

- ❑ You must respond to a records request as soon as possible, but no later than three business days after receipt.
 - ❑ You cannot avoid a records request by destroying records after receipt of a request.
 - ❑ You may charge only the actual cost of document search and duplication.
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Senate Bills 968 & 969



Probationary Teachers – Section 168.126

- ❑ **Current law requires notice in writing to a probationary teacher who is not retained by the school district and, upon the teacher's request, a concise statement concerning the reason for such termination.**
- ❑ **New law requires the district in all cases to issue notice to the teacher expressly declaring the reason for the termination if the reason for such is due to a decrease in pupil enrollment, school district reorganization, or the financial condition of the school district.**



Involuntary Leave – Section 168.124

- ❑ Applies to use of involuntary leave for reduction in force.
 - ❑ Triggered by a partial withholding of, or a decrease or less than expected increase in, education appropriations.
 - ❑ Criteria for application:
 - Unrestricted combined ending fund balance of more than ten percent of current expenditures in its teachers' and incidental funds.
 - In the subsequent fiscal year places a contracted teacher on leave of absence forty days after the governor signs the elementary and secondary education appropriations bill.
 - The district shall pay the teacher the greater of his or her salary for any days worked under the contract, or a sum equal to three thousand dollars.
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Web Posting of Handbooks

- **SECTION 3 - If a school district hosts a web site, that district shall post both a current version of that district's policy manual and a current version of that district handbooks.**
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Suspension Zone

- ❑ Students suspended for Safe School Act violations and drug related violations shall not be allowed, while on such suspension, to be within 1000 feet of any public school.
- ❑ Students violating this provision may be subject to further disciplinary actions.



Exceptions

- o Students under the direct supervision of a parent, legal guardian, or custodian.
 - o Students under the direct supervision of another adult designated by the parent, legal guardian, or custodian, in advance, in writing, to the principal of the school.
 - o Students in an alternative school located within 1000 feet of a public school where the student attended.
 - o Students residing within 1,000 feet of any public school.
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Student Searches – 167.166

- ❑ Public school employees, charter school employees and public school volunteers are not authorized to conduct strip searches of students.
 - ❑ Exception: If a commissioned law enforcement officer is not immediately available, and if the employee reasonably believes that a student possesses a weapon, explosive, or substance that poses an imminent threat of physical harm to himself or herself or another person.
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General Provisions

- ❑ Employees cannot remove religious emblems, insignias from students as long as the item doesn't cause a disruption.
 - ❑ Students expelled for SSA violations will not be counted as dropouts.
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HB 1453 – Student Safety

- ❑ Corrects the language in Section 210.145 to allow DFS employees to conduct interviews on school grounds.
 - ❑ Beginning January 1, 2005, all pupil contact employees shall submit to a background check before having contact with students.
 - ❑ EFFECTIVE DATE: July 1, 2004 or upon signing, whichever occurs later.
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Contact Information

School Laws Web Page

<http://dese.mo.gov/schoollaw/>

Sunshine Law Web Page

<http://ago.gov/sunshinelaw/sunshinelaw.htm>

School Governance Web Page

<http://dese.mo.gov/divadm/govern/index.html>
